

Memorandum

TO: Mr. Pete Gutwald, Director, Department of Planning and Zoning

FROM: Jennifer M. Smith, Geosyntec Consultants, Inc.

DATE: October 22, 2007

SUBJECT: Zoning Code Update Meeting 7 – Meeting Summary
October 8, 2007, Second Floor Conference Room
Harford County Office Building

Attendees

Workgroup Members Present:

Col. Charles Day
Mr. Samuel Fielder, Jr.
Mr. Frank Hertsch
Mr. Tim Hopkins
Mr. Douglas Howard
Mr. Gil Jones
Mr. Michael Leaf
Ms. Gloria Moon
Mr. Torrence Pierce
Mr. Frank Richardson
Mr. Lawrason Sayre
Mr. Chris Swain
Mr. Jay Young

Workgroup Members Absent:

Ms. Susie Comer
Ms. Carol Deibel
Mr. Rowan G. Glidden
Mr. William E. Goforth
Ms. Susan B. Heselton
Mr. Jeffrey K. Hettleman
Mr. Gregory J. Kappler
Mr. Jim Turner
Mr. Bill Vanden Eynden
Mr. Craig Ward
Ms. Marisa Willis

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County Representatives Present:

Mr. Pete Gutwald, Director, Department of Planning and Zoning

Mr. Tony McClune, Deputy Director, Department of Planning and Zoning

Ms. Janet Gleisner, Chief, Division of Land Use and Transportation

Ms. Theresa Raymond, Administrative Assistant, Director's Office

Facilitators:

Ms. Jennifer M Smith, Geosyntec

Ms. Christy Ciarametaro, Geosyntec

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Meeting Summary

The seventh meeting of the Harford County Zoning Code Update Workgroup was held at 2:00 pm in the second floor conference room at the offices of the Department of Planning and Zoning. A meeting agenda was distributed to each workgroup member. A sign-in sheet was distributed to the group. The Meeting Summary from Meeting 6 was distributed for review and was approved with one change. Mr. Michael Leaf's name will be added to the listing of Workgroup Members Present for Meeting 6.

The summary provided below for Meeting 7 documents a discussion between Workgroup members and Mr. Canavan. During the discussion, no decisions, conclusions, or recommendations were made by the Zoning Code Workgroup.

Presentation by Denis Canavan – Transfer of Development Rights (TDR)

Pete Gutwald, Director of Planning and Zoning for Harford County, introduced Denis Canavan, Director of St. Mary's County Department of Land Use and Growth Management, an expert in Transfer of Development Rights Programs in Maryland. Mr. Canavan discussed his experiences with the transfer of development rights programs in Montgomery County, MD and St. Mary's County, MD, the differences between both, as well as concepts that were successful, and those that were not, and why. He explained the most successful programs in Maryland have common features or attributes including:

1. TDR's make economic sense to developers. It has to be viable to users;
2. Elected officials must be willing to adopt significant downzoning of farmland to preserve AG land or maintain the demand for TDR's;
3. Large or multiple receiver areas provide bonus density for using TDR's that significantly exceeds base zoning density, and, there is a market demand for higher density;

4. The demand for TDR's should be carefully balanced with the total supply of TDR's. Not all TDR's will be transferred. The AG community as land owners will pass some on to future generations, or will simply keep them;
5. County policy requires the use of TDR's for increasing zoning density in receiver areas. It is important that this policy is consistently applied now, and in the future.
6. TDR's should be combined with other land preservation tools. Preservation programs (MALPF, PDR, etc.) must also be utilized;
7. Permanent easements restrict TDR sending sites for agricultural, agriculturally related uses, forestry or open space; and,
8. Sufficient professional staff support is necessary to administer the program. Stakeholder support is necessary as well. It is important to put program information in a format (brochures, etc.) that ensures that citizens understand the program.

Mr. Canavan described the criteria used for measuring the potential for successful TDR programs:

1. TDR's have sufficient value to buyers and sellers to sustain an active market to accomplish preservation goals;
2. The County has a strong Comprehensive Plan and zoning policies that support the use of TDR's;
3. Administration of TDR's is simple, efficient and predictable (buyers of TDRs need to be confident that TDR regulations won't constantly change); and,
4. The TDR program has broad public support.

Workgroup members were provided a copy of the Montgomery County and St. Mary's County TDR Legislation, as well as electronic copies of a TDR Feasibility Study completed in January 2007 for the Eastern Shore of Maryland. Mr. Canavan stated that one TDR program will not be successful in every jurisdiction and that TDR programs should be one of several tools used to protect agricultural land.

Mr. Canavan explained that both Montgomery County and St. Mary's County have very different TDR programs, based on the different components in each jurisdiction. He provided a brief history and details of the TDR programs in each jurisdiction. Key components of each program are:

Montgomery County:

- Downzoned areas that were designated to be allowed to sell TDRs from 1 unit per 5 acres to 1 unit per 25 acres.
- Allows TDRs to be sold at 1 unit per 5 acres (the former zoning density).
- Identified specific areas that could receive TDRs. The TDR density chosen should be based on adjacent land uses and infrastructure.
- Continues to monitor and revise the program because not all its receiving properties were developable at the maximum allowable capacity.

- Approximately 102,000 acres of Ag zoned land existed in the County at the time of program creation. Approximately 48,000 acres have been protected using the TDR program.

St. Mary's County:

- Requires the purchase of TDRs for any property that wishes to develop above the base density within the development district., but for the single DMX (Downtown Mixed Use) zone which allows as a matter of right up to 20 units per acre.
- All agriculture land is zoned 1 unit per 5 acres. TDRs can be purchased to achieve a density of 1 unit per 3 acres.
- A fee-in-lieu option exists. The developer may pay a \$18,000 fee-in-lieu of purchasing TDRs. County uses the money to buy agricultural easements.
- TDRs can also be used for industrial and commercial areas.
- Approximately 178,000 acres of Ag zoned land existed in the County at the time of program creation. Approximately 1,800 acres have been protected using the TDR program.

Mr. Canavan stated that the regulations for any TDR program must be clearly understandable to the average citizen. By making the process as simple as possible, more people are likely to use it (i.e. St. Mary's County does not require resurveying in order to grant an easement and sell a TDR). Additionally, strong coordination between towns and the County will help the TDR program be successful. It is important to remember that while the purpose of a TDR program is to preserve agricultural land for farming, TDRs can not make farmers farm their land. Agricultural preservation must be balanced with economic development and housing requirements. With any TDR program, it is important to monitor development and TDR prices after the program is initiated.

Workgroup Discussion:

A workgroup discussion followed Mr. Canavan's presentation.

Purpose and Intent of TDRs

The workgroup discussed the purpose and intent of TDRs for protecting agricultural land. A TDR program is one of many options for preserving open space and agricultural land. Workgroup members discussed the appropriateness of TDR's in relationship to increasing density of the zoning. If a property is given a base density through zoning (following the Land Use Plan, infrastructure, and all other policies), why is it appropriate to require the purchase of TDR's to gain additional density?

Mechanics and Implementation

Much of the workgroup discussion focused on the mechanics of TDR Implementation. In Montgomery County, implementation of the TDR program is quite different than in St. Mary's County. A primary difference between the two programs is when and where TDRs apply. In Montgomery County, the option to use TDRs to increase density on a parcel is purely voluntary. If TDRs are not purchased, a parcel can still be developed to a density less than that which can be transferred. However, in St. Mary's County, the owner of a parcel who wishes to increase density above the 1 per 5 acre density must purchase TDRs. In order to continue to promote growth and redevelopment, however, the area near Patuxent River Naval Air Station is excluded from the TDR purchasing requirement (Location of the DMX zone).

The workgroup discussed how much a unit purchased as a TDR would typically cost. In St. Mary's County, the market rate per unit of a TDR is currently \$15,000. The workgroup also discussed alternatives to direct sales between the owner of a sending parcel and a receiving parcel. One alternative that has been successful in St. Mary's County is the use of a fee-in-lieu system. Under this system an owner of a receiving parcel can pay a slightly higher rate for a unit of development directly to the County as a fee-in-lieu of purchasing this unit of development from a sending parcel owner. The fee in lieu revenue is then used by the County to purchase protective agriculture easements.

There was a brief discussion on whether purchased development rights must be used or applied to an identified receiving parcel at the time of purchase. In Montgomery and St. Mary's Counties, buying TDRs and holding onto them for future use is permitted. Ownership of TDRs must be known prior to their actual use on a receiving parcel.

There was a brief discussion on allowing additional density in agricultural zoned land for family member units. Exclusions can be made to the TDR regulations, as they were in St. Mary's County, to account for family members who want to allow a child to build a residence on the family land.

A question was asked about how Harford County should consider agricultural zoned land to be annexed by an incorporated area. It was emphasized that an incorporated area wishing to annex agriculturally zoned land from the County be supportive of and adopt the County's TDR program.

TDRs in Harford County

There was a considerable workgroup discussion regarding how Harford County could successfully use a TDR program, given the nature of the existing zoning regulations. Currently the Harford County TDR program is set up for development right transfers between properties zoned for agriculture. The workgroup discussed whether application of purchased development rights should be expanded to other areas of the County. The question of whether receiving parcels should be located only within the development envelope or could be located outside a development envelope was raised. One member of the workgroup suggested making an area around the perimeter of the existing development envelope the receiving area. Montgomery County's TDR program includes specified receiving areas for development. These specified

receiving areas were identified based on studies that showed that maximum allowable densities could be achieved, and if increased, there would be little negative impact on surrounding areas and infrastructure. By contrast, the St. Mary's County TDR program considers the entire county a receiving area.

This discussion continued with an emphasis on fair equity. If Harford County designated certain locations as "receiving areas", or areas where TDRs can be utilized, then property values would increase in the receiving areas. In contrast, application of the TDR program is considered by some members of the workgroup as a way to equalize property values between those in the development envelope and those outside of the development envelope. Although a property owner located in an agricultural zone may not be able to develop at the same density as a property owner located in the development envelope, allowing TDRs to be sold on this property provides some additional financial relief and at the same time helps to achieve the goal of agricultural land preservation.

A number of challenges were identified by the workgroup members to expanding the existing Harford County TDR program to other zoning classifications:

1. **Current Comprehensive Zoning Process:** Under the current Harford County Zoning Code, property owners can pay a \$100 application fee to request a greater density zoning classification. Therefore, the question was raised that with this option available for properties within the growth management envelope, what will make purchasing TDRs at a higher price a preferred option? **The County could investigate creating an area just outside of the current development envelope to allow increased zoning through TDR purchases.**
2. **Current Zoning Code Design Standards:** The workgroup discussed the inefficiency of current design standards in the development envelope and how they will need to be modified to allow existing maximum densities to be achieved before anyone will purchase more density. In St. Mary's County, TDRs are to be used county-wide. However, development is still encouraged to be inside the development envelope by flexible development standards. **Design Standards should be studied to ensure there is flexibility in both horizontal and vertical criteria.**

TDRs and the Harford County Planning Process

There was a discussion about how the purpose of the County Master Plan is to provide guidance on future development. It was stated that, unlike the Zoning Code, the Master Plan guidelines are not enforceable. These guidelines, along with those in the Land Use Element Plan, should lead workgroup members in the changes to the Zoning Code.

Administrative Issues:

Mr. Denis Canavan has willingly offered to return to another Zoning Code Update Workgroup meeting to further discuss the options for TDR use in Harford County. The meeting was adjourned at 4:00 pm.

At Meeting 8, the workgroup will discuss Agriculture.

Mr. Gutwald would like for workgroup members to review §267-13(H) for Meeting 8 in addition to §267-53, §267-72, §267-73, and Subdivision Regulations Section 6.01

The Harford County Zoning Code website can be accessed at:
<http://www.harfordcountymd.gov/ZCUpdate/index.cfm>.

Meeting Handouts

1. Meeting Agenda
2. Draft Meeting 6 Summary – September 24, 2007
3. Folder with TDR information from St. Mary's County and Montgomery County, prepared by Mr. Canvan

Next Scheduled Meetings

Date: October 22, 2007
Time: 2:00 pm - 4:00 pm
Topic: Meeting 8 – Agriculture (District Regulations)
Location: Harford County Administrative Office Building
220 South Main Street
2nd Floor Conference Room
Bel Air, MD 21014

Date: November 19, 2007
Time: 2:00 pm - 4:00 pm
Topic: Meeting 9 – Agriculture (District Regulations) and Builders for the Bay and Smart Growth (District Regulations)
Location: Harford County Administrative Office Building
220 South Main Street
2nd Floor Conference Room
Bel Air, MD 21014